

VIRGINIA CODE COMMISSION

Tuesday, June 7, 2011 - 10:00 a.m.
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219

MEMBERS PRESENT: John S. Edwards, Bill Janis, Jim LeMunyon (by teleconference); Ryan McDougale; Robert L. Calhoun; Thomas M. Moncure, Jr.; Frank Ferguson; Wesley G. Russell, Jr.; E.M. Miller, Jr.

MEMBERS ABSENT: Charles S. Sharp, Patricia West

OTHERS PRESENT: Brian Kennedy, LexisNexis; Lane Kneedler, Reed Smith

STAFF PRESENT: David Cotter, Jessica Eades, Jane Chaffin, Lilli Hausenfluck, Karen Perrine, Beth Jamerson

Call to order; minutes

Senator Edwards called the meeting to order at 10:10 a.m. Upon a motion made by Mr. Miller and seconded by Mr. Ferguson, the Commission approved the minutes of the June 7, 2011, meeting.

Foreword to the Code of Virginia

Mr. Moncure updated the Commission on the status of the edited version of the Foreword to the Code of Virginia, which will be published in the 2011 Replacement Volume 1 scheduled for release in September. To date, Legislative Services chief editor Lilli Hausenfluck has reviewed the draft in detail and incorporated suggested changes from Senator Edwards and Delegate Janis. Mr. Moncure is working on the final compilation, which he will present to the Commission at its next meeting. There was discussion about the reference in the Foreword to the publication of local acts and whether such reference should be retained or removed. Ms. Hausenfluck advised the members that uncodified local acts, such as charters and authorities, are maintained on the DLS website. Mr. Moncure stated that he will edit this information into the Foreword as a resource. All members were in agreement with this plan.

Proposed work plan for studying prospective incorporation by reference of federal law in the Code of Virginia

Jessica Eades presented a proposed work plan with several options for studying the practice of incorporating federal law by reference in the Code of Virginia. The practice raises several issues, including whether the use of "as amended" or similar references raises a constitutional issue for prospective incorporation. Some of the other states permit prospective incorporation by reference, and some do not. The Virginia constitution currently limits prospective incorporation to the tax laws.

Delegate LeMunyon suggested that NCSL or another national group might be a resource for more information.

Mr. Ferguson added the observation that, regardless of the outcome of the study as it relates to adopting federal law by reference, the Commission should also address the issue of adopting a private group's standards prospectively and any related constitutional issues. Ms. Eades advised that a 1994 Attorney General opinion addresses the unconstitutional delegation of private standards.

1 After reviewing and discussing the presented options on the work plan, the Commission asked
2 Ms. Eades to conduct a 50-state survey to see how the issue is addressed in each state, analyze
3 Virginia Code for use of incorporated by reference, identify terminology inconsistencies within
4 the Virginia statutory code, and present this information to the Commission at a future meeting.
5 By consensus, the Commission approved the work plan.

6 **Recodification of Title 64.1 of the Code of Virginia**

7 Mr. Cotter presented proposed Chapter 4 of Title 64.2 (Personal Representatives and
8 Administration of Estates). Upon completion of Chapter 4, the Commission will have finished
9 Subtitle II and will begin Subtitle IV at the July meeting.

10 During its review, the Commission discussed or took action on the following sections:

- 11 1. § 64.2-202 C - At Senator Edwards' request, staff will rewrite subsection C to clarify the
12 language in clause (ii).
- 13 2. § 64.2-205 - Mr. Cotter distributed a newly revised page containing § 64.2-205 to replace
14 the corresponding page in the notebook. Senator Edwards made a motion, seconded by
15 Senator Calhoun, to rewrite subsection A by providing that the clerk of the court may
16 require a personal representative to furnish security. The motion was approved.
- 17 3. § 64.2-210 - Mr. Cotter distributed a newly revised page containing 64.2-210 to replace
18 the corresponding page in the notebook. The Commission discussed the provisions for
19 recording and indexing affidavits relating to the real estate of an intestate decedent and
20 the payment of fees before recordation. They discussed the reasonableness of recording
21 the affidavit in both the will book and deed book. Senator Calhoun commented that he
22 wants it to be clear that only one fee can be collected if recorded in both books.
- 23 4. § 64.2-219 - Staff was asked to clarify the language pertaining to "suits for personal
24 injury or wrongful death" and to update the section catchline.
- 25 5. § 64.2-239 - A question about the constitutionality of the language incorporating federal
26 law arose. Specifically, in the definition of "gross estate," the provision allows you to
27 define Virginia gross income to the federal definition for Virginia purposes. The
28 Commission will revisit the issue once the study on prospective incorporation by
29 reference of federal law is finalized. § 64.2-244 contains another example of
30 incorporation by reference to federal law.
- 31 6. § 64.2-246 - Staff was asked to rewrite the term "executor de son tort" in understandable
32 language. Senator Calhoun suggests using "an executor acting without authority." Senator
33 Edwards asked Mr. Cotter to take the suggested language back to the work group.
- 34 7. § 64.2-248 - Mr. Ferguson asked about replacing "devastavit" with plain language. Mr.
35 Cotter explained that the work group decided to retain the term rather than modernize the
36 language because of concern of inadvertently omitting something.
- 37 8. § 64.2-250 B (line 955) - The Commission discussed the language that reads: "The
38 personal representative shall give written notice by personal service or by regular,
39 certified, or registered mail... ." By consensus, the Commission asked staff to consult
40 JCOTS about drafting a general bill to expand mail delivery options services for court
41 filings to include email and mail service carriers other than the U.S. postal service (such
42 as FEDEX and UPS).

1 Mr. Cotter indicated that Chapter 4 was complete and that he plans present Subtitle IV at the July
2 meeting.

3 **Virginia Administrative Code Price Increase Request**

4 The Virginia Administrative Code publishing contract provides West with the opportunity to
5 request an increase each year after publication of the final annual Producer Price Index Industry
6 Data for Book Publishers -- Technical, Scientific, and Professional Book Publishing. From
7 January 2009 to January 2010, the index increased by 6.8 percent. The Commission approved a
8 6.8 percent price increase request from West (Thomson-Reuters) for the Virginia Administrative
9 Code print supplements and volumes.

10 **Proposed work plan for updating the Virginia Code Commission Regulations**

11 Karen Perrine explained the Commission's statutory authority to issue regulations as they relate
12 to the Virginia Register Act and the Virginia Administrative Code. She stated that the regulations
13 were last updated in 1994 and outlined a number of issues that need to be addressed. A work
14 group of agency regulatory coordinators and Registrar's office staff will meet and prepare a draft
15 of regulations for consideration by the Commission later this year. Mr. Russell made a motion,
16 seconded by Mr. Ferguson, to approve the work plan for updating the Code Commission
17 regulations. The motion was approved.

18 **Other Business; Public Comment; Adjourn**

19 Jane Chaffin advised the members that the August meeting should be rescheduled because a
20 quorum would not be present. Senator Edwards asked Ms. Chaffin to poll the members for a new
21 date.

22 The Chair opened the floor for public comment. As there was no public comment and no further
23 business to be discussed, the meeting adjourned at 1:05 p.m.